

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

CHYRILLE SMITH, SAMANTHA SMITH,  
and RAYMOND WILLIAMS,

Plaintiffs,

Index Number:  
17630/08

-against-

**NOTICE OF  
REMOVAL**

CITY OF MOUNT VERNON, POLICE  
OFFICERS JOHN DOE AND RICHARD  
ROE (NAMES AND NUMBER OF WHOM  
ARE UNKNOWN AT PRESENT), AND  
OTHER UNIDENTIFIED MEMBERS OF  
THE MOUNT VERNON POLICE DEPARTMENT,

Defendants.

JUDGE ROBINSON

SD. DISTRICT OF N.Y.  
CLERK  
SEP 2 2008

**DEFENDANTS' NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. 1441 *et. seq.* and Local Rule 8 1.1(b), defendants,

CITY OF MOUNT VERNON, POLICE OFFICERS JOHN DOE AND RICHARD ROE  
(NAMES AND NUMBER OF WHOM ARE UNKNOWN AT PRESENT), AND OTHER  
UNIDENTIFIED MEMBERS OF THE MOUNT VERNON POLICE DEPARTMENT,  
fictitious names, true names Unknown ("Defendants") hereby give notice of the  
removal of a civil action entitled:

**CHYRILLE SMITH, SAMANTHA SMITH, and RAYMOND WILLIAMS,**

Plaintiffs,

-against-

CITY OF MOUNT VERNON, POLICE OFFICERS JOHN DOE AND RICHARD  
ROE (NAMES AND NUMBER OF WHOM ARE UNKNOWN AT PRESENT),  
AND OTHER UNIDENTIFIED MEMBERS OF THE MOUNT VERNON POLICE  
DEPARTMENT

Defendants.

from the Supreme Court of the State of New York, County of Westchester, Index No. 17630/08 to the United States District Court for the Southern District of New York.

The grounds for removal are that the instant matter raises questions of Federal constitutional law.

As alleged in the Plaintiff's Complaint filed in State Court, a copy of which is attached as Exhibit "A", the Plaintiff has asserted among other things, that the Defendants conducted an intrusive and destructive search of the Plaintiff's apartment; willfully arrested and/or detained the plaintiffs and held them in confinement, unlawfully maliciously and wrongfully against their will, without their consent and without just or probable cause. Specifically, Plaintiffs allege that they suffered mental and emotional injuries, loss of liberty, and or deprivation of their civil rights under section 42USC 1983 and 1988 and the Fourth and Fourteenth Amendment of the constitution of the United States. As such, jurisdiction lies in Federal Court for claims arising under 42 USC § 1983, removal is proper.

The removal of the action from State Court is timely. The instant proceeding was filed with the Clerk of the Supreme Court, Westchester County, on August 12, 2008, and served on the City on August 13, 2008. Thus, the City hereby makes the instant removal request within the twentieth day of such filing and receipt of the Summons and Complaint.

No jury demand was made in the State Court prior to removal.

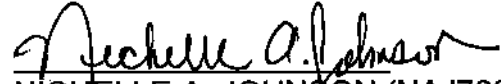
A copy of the Summons and Verified Petition-Complaint is appended to this Notice of Removal.

Pursuant to Local Rule 81.1(b), within twenty days after the service of this Notice of Removal the defendants will file a copy of all records and Proceedings of the State Court with the Clerk of this Court.

Dated: Mount Vernon, New York  
August 26, 2008

Yours, etc.,

HELEN M. BLACKWOOD, ESQ.  
CORPORATION COUNSEL



NICHELE A. JOHNSON (NAJ7688)  
Assistant Corporation Counsel  
Attorneys for Defendant  
City of Mount Vernon  
City Hall  
One Roosevelt Square  
Mount Vernon, New York 10550

To:  
PATRICK O. FORRESTER, ESQ.  
Attorney For Plaintiff  
903-B Sheridan Ave  
Bronx, New York 10451  
(718) 325-5500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
**CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

Index No. 17630/08

Plaintiffs

**SUMMONS**

-against-

**CITY OF MOUNT VERNON, POLICE OFFICERS  
JOHN DOE and RICHARD ROE** (names and  
number of whom are unknown at present), and  
other unidentified members of the MOUNT VERNON  
POLICE DEPARTMENT,

Defendants.

-----X

**To the above named Defendants:**

**You are hereby summoned** to answer the complaint in this action, and to serve a copy of your answer, or if the complaint is not served with this summons, to serve notice of appearance on the Plaintiff's attorneys within twenty days after service of this summons, exclusive of the day of service, where service is made by delivery upon you personally within the state, or, within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Bronx, New York  
August 12, 2008



**PATRICK O. FORRESTER, ESQ**  
Attorney for the Plaintiffs  
903-B Sheridan Ave  
Bronx, New York 10466  
(718) 325-5500

**TO: CITY OF MOUNT VERNON**  
One Roosevelt Square  
Mount Vernon, NY 10550

**MOUNT VERNON POLICE DEPARTMENT**  
2 Roosevelt Square North  
Mount Vernon, NY 10550

**RECEIVED**  
AUG 12 2008  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Hand served  
AS

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
**CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

Index No. *17630/08*

Plaintiffs

**VERIFIED  
COMPLAINT**

-against-

**CITY OF MOUNT VERNON, POLICE OFFICERS  
JOHN DOE and RICHARD ROE** (names and  
number of whom are unknown at present), and  
other unidentified members of the MOUNT VERNON  
POLICE DEPARTMENT,

Defendants.

-----X

The Plaintiffs **Chyrille Smith, Samantha Smith and Raymond Williams** by their  
attorney, **PATRICK O. FORRESTER, ESQ.**, complaining of the Defendants,  
respectfully allege, upon information and belief, as follows:

**AS AND FOR THE FIRST CAUSE OF ACTION ON BEHALF OF THE  
PLAINTIFFS, CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

1. That at the time of the incident the plaintiffs were residents of the County of Westchester, State of New York.
2. That the plaintiffs are now residents of the County of Bronx.
3. New York City Police Officers John Doe and Richard Roe are and were at all times relevant herein officers, employees and agents of the Mount Vernon Police Department. Officers John Doe and Richard Roe are being sued herein in their individual capacities.
4. At all times relevant herein, the individual defendants were acting under color

**RECEIVED**  
AUG 12 2008  
TIMOTHY C. IDONI  
COUNTY CLERK  
COUNTY OF WESTCHESTER

of state law in the course and scope of their duties and functions as agents, servants, employees and officers of the Mount Vernon Police Department, and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the Mount Vernon Police Department at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the Mount Vernon Police Department and incidental to the lawful pursuit of their duties as officers, employees and agents of the Mount Vernon Police Department.

5. That at all times hereinafter mentioned, the defendant, **THE CITY OF MOUNT VERNON** was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible.

6. The defendant, City of Mount Vernon assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the Mount Vernon Police Department.

7. That on August 15, 2007, officers John Doe and Richard Roe and other unidentified officers employed by defendants, **THE CITY OF MOUNT VERNON** and/or **THE MOUNT VERNON POLICE DEPARTMENT**, while acting within the scope of their duties, and without probable cause, conducted an intrusive and destructive search of the plaintiffs' apartment.

8. The defendants agents, servants and/or employees of the defendants upon a

warrant designed to be effected on another apartment within the same building, entered the plaintiff's apartment located at 207 1<sup>st</sup> Avenue, Mount Vernon, New York, by kicking the door off its hinges and searching within each and every room in the apartment causing items from drawers to be strewn all over the apartment, without consent of the plaintiffs.

9. That no negligence on the part of the plaintiffs contributed to the occurrence alleged herein in any manner.

10. The above mentioned occurrence, and the results thereof, were caused by the joint, several and concurrent negligence of the Defendants and/or the Defendants' servants, agents, or employees.

11. That as a result of the occurrence, Plaintiffs suffered mental and emotional anguish.

12. That as a result of the foregoing, Plaintiff was damaged in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**AS AND FOR THE SECOND CAUSE OF ACTION ON BEHALF OF THE PLAINTIFFS, CHYRILLE SMITH, SAMANTHA SMITH AND RAYMOND WILLIAMS**

13. The plaintiffs repeat and reiterate all the foregoing allegations contained in paragraphs numbered "1" through "12" inclusive, with the same force and effect as though fully set forth at length herein.

14. Also that on August 15, 2007, officers John Doe and Richard Roe and other unidentified officers employed by defendants, **THE CITY OF MOUNT VERNON** and/or **THE MOUNT VERNON POLICE DEPARTMENT**, while acting within the scope of their duties, with force and arms, wrongfully, intentionally, knowingly and

willfully arrested and/or detained the plaintiffs for no good reason, and held them in confinement in living room of their apartment, under guard as common criminals, hindering and preventing them from performing and transacting their affairs and business, this being done unlawfully maliciously and wrongfully against their will and without their consent and without just or probable cause.

15. In addition plaintiff Chyrille Smith was handcuffed throughout this ordeal.

16. None of the plaintiffs were allowed to leave the living room, and were restricted from making any phone calls for over an hour.

17. This false imprisonment of the plaintiffs occurred while the police officers knew that the plaintiffs' apartment was not the subject of their search, and while they carried out a search in another apartment.

18. That no negligence on the part of the plaintiff contributed to the occurrence alleged herein in any manner.

19. That as a result of the aforementioned intentional acts of the defendants, their agents, servants and/or employees, the plaintiffs suffered, mental and emotional injuries, loss of liberty, and or deprivation of civil rights under Section 42 USC 1983 and 1988 and the Fourth and Fourteenth Amendment of the constitution of the United States were violated.

20. That as a result of the foregoing, Plaintiffs was damaged in the sum of TWO HUNDRED THOUSAND (\$200,000.00) DOLLARS.

**AS AND FOR THE THIRD CAUSE OF ACTION ON BEHALF OF THE  
PLAINTIFFS, CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

21. The plaintiffs repeat and reiterate all the foregoing allegations contained in



paragraphs numbered "1" through "20" inclusive, with the same force and effect as though fully set forth at length herein.

22. Also that the defendants, John Doe and Richard Roe and other unidentified Officers employed by defendants, **THE CITY OF MOUNT VERNON** and/or **THE MOUNT VERNON POLICE DEPARTMENT**, intentionally inflicted emotional distress upon the plaintiff, after knowing that the neither plaintiffs nor their apartment was the subject of a warranted search, continued to detain and/or unlawfully imprison and guard them as common criminals, while defendants carried out their search on another apartment.

23. Each plaintiff was made to watch each other go through this ordeal.

24. During this time Chyrille Smith also had great fear for the life of her unborn child, and the well being of her two minor children, Samantha Smith and Raymond Williams.

25. That as a result of the aforementioned intentional acts of the defendants, their agents, servants and/or employees, the plaintiffs suffered severe mental and emotional injuries.

26. That as a result of the foregoing, Plaintiff was damaged in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**AS AND FOR THE FOURTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFFS, CHYRILLE SMITH, SAMANTHA SMITH AND RAYMOND WILLIAMS**

27. The plaintiffs repeat and reiterate all the foregoing allegations contained in paragraphs numbered "1" through "26" inclusive, with the same force and effect as though fully set forth at length herein.

28. That by reason of the above stated facts, the defendants, were negligent, careless and reckless in the hiring, training and or supervising of officers John Doe and Richard Roe and other involved unidentified police officers, and in all other ways, **THE CITY OF MOUNT VERNON** and/or **THE MOUNT VERNON POLICE DEPARTMENT**, its agents, servants and/or employees, were negligent, careless and reckless.

29. Since at all times the officers, defendants' agents, servants and/or employees were acting within the scope of their employment by the City of Mount Vernon and the Mount Vernon Police Department, are therefore responsible for their conduct.

30. That as a result of the aforesaid, the plaintiffs have been damaged in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**AS AND FOR THE FIFTH CAUSE OF ACTION ON BEHALF OF THE PLAINTIFF CHYRILLE SMITH**

31. The plaintiff Chyrille Smith repeats and reiterates all the foregoing allegations contained in paragraphs numbered "1" through "30" inclusive, with the same force and effect as though fully set forth at length herein.

32. Also That on August 15, 2007, the plaintiff was lawfully and peaceably within her apartment located at 207 1<sup>st</sup> Avenue, Mount Vernon, New York, when she was caused to be battered, verbally, physically, and mentally abused, when she was tackled to the floor of her apartment and handcuffed from behind, by the defendants, their agents, servants and/or employees without just cause or provocation, or consent of the plaintiff.

33. That no negligence on the part of the plaintiff contributed to the occurrence alleged herein in any manner.

34. That as a result of the aforementioned intentional acts of the defendants, their

agents, servants and/or employees, the plaintiff Chyrille Smith who was pregnant at the time was caused to suffer severe physical and mental pain and nervous shock, and was forced to seek medical attention.

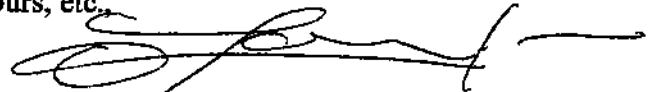
35. That as a result of the foregoing, Plaintiff was damaged in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS.

**WHEREFORE**, a notice of claim was served on the Corporations Counsel of the City of Mount Vernon and at least thirty days have elapsed since the service of such notice and adjustment and/or payment has been neglected and/or refused.

**WHEREFORE**, Plaintiffs **Chyrille Smith, Samantha Smith and Raymond Williams** demand judgment against the Defendants in the amount of SIX HUNDRED THOUSAND (600,000.00) DOLLARS, together with the costs and disbursements of this action., and such other and further relief as the Court shall deem just and proper.

Dated: Bronx, New York  
August 12, 2008

Yours, etc.,



**PATRICK O. FORRESTER, ESQ**

Attorney for the Plaintiffs  
903-B Sheridan Ave  
Bronx, New York 10466  
(718) 325-5500

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

-----X  
**CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

Plaintiffs

-against-

**CITY OF MOUNT VERNON, POLICE OFFICERS  
JOHN DOE and RICHARD ROE** (names and  
number of whom are unknown at present), and  
other unidentified members of the MOUNT VERNON  
POLICE DEPARTMENT,

Defendants.  
-----X

**CERTIFICATION**

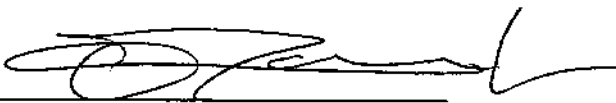
**PURSUANT TO  
CPLR § 130-1.1a (b)**

Index No.: 17630/08

PATRICK O. FORRESTER, ESQ., an attorney duly admitted to practice law before the  
courts of this State, states the following to be true under penalties of perjury:

I hereby certify pursuant to 22 NYCRR Section 130—1.1a(b) that to the best of my  
knowledge, information and belief, formed after an inquiry reasonable under the  
circumstances, the presentation of the papers listed below or the contentions therein are  
not frivolous as defined in 22 NYCRR Section 130-1.1(c): Verified bill of Particulars and  
Response to Combined Demands.

Dated: Bronx, New York  
August 12, 2008

  
**PATRICK O. FORRESTER, ESQ**  
Attorney for the Plaintiffs  
903-B Sheridan Ave  
Bronx, New York 10466  
(718) 325-5500

SUPREME COURT OF THE STATE OF NEW YORK      Index No.  
COUNTY OF WESTCHESTER

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**CHYRILLE SMITH, SAMANTHA SMITH AND  
RAYMOND WILLIAMS**

Plaintiff,

-against-

**CITY OF MOUNT VERNON, POLICE OFFICERS  
JOHN DOE and RICHARD ROE** (names and  
number of whom are unknown at present), and  
other unidentified members of the MOUNT VERNON  
POLICE DEPARTMENT,

Defendant.

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**SUMMONS AND VERIFIED COMPLAINT**

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PATRICK O. FORRESTER, ESQ.,  
903-B Sheridan Avenue  
Bronx, NY 10451

To:

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Service of a copy of the within                      is hereby admitted.

Dated: \_\_\_\_\_

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**PLEASE TAKE NOTICE**

That the within a (certified) true copy of a                      entered in the office of the  
clerk the within named court on

That an Order of which the within is a true copy will be presented for settlement  
to the Hon

One of the judges of the within named court at  
On                      2008 at                      M.

Dated:

To:

STATE OF NEW YORK, COUNTY OF WESTCHESTER  
CITY OF MOUNT VERNON

I, the undersigned, am an attorney admitted to practice in the courts of New York State, and

- ☐ Certification by Attorney certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.
- ☐ Attorney's Affirmation say that: I am the attorney of record or of counsel with the attorney(s) of record, for I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of

is

I affirm that the foregoing statements are true under penalties of perjury.

Dated:

(The name signed must be printed beneath)  
NICHELLE A. JOHNSON

STATE OF NEW YORK, COUNTY OF WESTCHESTER  
CITY OF MOUNT VERNON

being sworn says: I am

- ☐ Individual Verification in the action herein; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.
- ☒ Corporate Verification the of the City of Mount Vernon a municipal corporation, one of the parties to the action; I have read the annexed Notice of Removal know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following: - Information, records and documents in the possession of officials, Boards, or Departments of the City of Mount Vernon, and from conversations had with said officials.

Sworn before me on August 26, 2008

NICHELLE A. JOHNSON

STATE OF NEW YORK, COUNTY OF WESTCHESTER  
CITY OF MOUNT VERNON

Cherylin G. Puma being sworn says: I am not a party to the action, am over 18 years of age and reside at Mount Vernon, New York

- ☒ Service By Mail On August 26, 2008 I served a true copy of the annexed Notice of Removal in the following manner:
- ☐ Personal Service by mailing the same in a sealed envelope, with postage prepaid thereon, in a post office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:
- by delivering the same personally to the person and at the addresses indicated below:

To:

PATRICK O. FORRESTER, ESQ.  
Attorney for Plaintiff  
903-B Sheridan Ave  
Bronx, New York 10451  
(718) 325-5500

Sworn to before me August 26, 2008

JOANNA H. AGGREY  
Notary Public, State of New York  
No. 62406198297

Qualified in Westchester County  
Commission Expires April 28, 2012

Cherylin G. Puma